

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

Berkeley,

127668

B-217488

**FILE:**

**DATE:** August 16, 1985

Washington Patrol Service, Inc.

**MATTER OF:**

**DIGEST:**

1. Where adequate competition and reasonable prices are obtained by the government and where protester has not shown a deliberate attempt by the agency to exclude it from the competition, an offeror bears the risk of nonreceipt or delay in the receipt of a solicitation.
2. Protest alleging that Commerce Business Daily (CBD) notice synthesizing procurement was misclassified is untimely when filed more than 10 working days after protester was advised of date when CBD notice appeared.

Washington Patrol Service, Inc. (WPS), protests the award of any contract under request for proposals (RFP) No. WA 84-A445 issued by the Environmental Protection Agency (EPA) for security support services. WPS contends that it was not given sufficient time to prepare a proposal and requests that EPA resolicit the requirement. In addition, WPS argues that EPA improperly awarded a sole-source contract to Dynatrend, Inc., for security support services even though many qualified companies could accomplish the statement of work. Also, WPS contends that the RFP was advertised incorrectly in the Commerce Business Daily (CBD).

We deny the protest in part and dismiss it in part.

The RFP was issued to meet EPA's growing security needs which were otherwise being provided by Dynatrend, Inc., in accordance with contract No. 68-01-6927. EPA states that it had underestimated the labor hours necessary to provide the level of required service under this contract and due to the increased requirements, it was decided to issue a new solicitation. EPA synopsisized this requirement in the CBD on September 6, 1984, and the

record indicates that 97 firms requested copies of the solicitation. The RFP was issued on November 28, with a closing date of December 28, 1984, and EPA indicates that five proposals were received. Because of delays in issuing the RFP, it became apparent that the maximum number of labor hours authorized under Dynatrend's contract would be exhausted before the completion of the new competitive process. As a result, EPA issued a noncompetitive modification to the contract adding an estimated 4,620 labor hours to its maximum amount. The modification was synopsized in the CBD on December 5, 1984, and was executed in order to ensure continued performance until the follow-on competitive procurement could be completed.

In response to the December 5 CBD announcement, WPS states that it telephoned EPA for a copy of the RFP. Apparently, WPS was under the belief that the CBD announcement concerned an RFP. On December 11, WPS submitted a written request to EPA for additional information concerning the December 5 CBD announcement. Although this announcement merely synopsized the modification of Dynatrend's contract, EPA responded to this request by mailing WPS a copy of RFP No. WA84-A445. WPS' written request was not received by EPA until December 17, 1984, and WPS states that it did not receive a copy of the RFP until December 26--2 days before the closing date for receipt of proposals. WPS argues that it was given insufficient time to prepare a proposal.

In general, the award of a contract is not improper solely because an offeror did not receive a copy of the solicitation, so long as there is adequate competition resulting in reasonable prices and there has been no deliberate or conscious intent on the part of the procuring agency to preclude a certain offeror from competing. See Maryland Computer Services, Inc., B-216990, Feb. 12, 1985, 85-1 CPD ¶ 187; Coast Canvas Products II Co., Inc., B-214272, July 23, 1984, 84-2 CPD ¶ 84. In the absence of substantive proof that an agency deliberately attempted to exclude a potential offeror, the offeror bears the risk of nonreceipt of a solicitation. Capital Engineering & Mfg. Co., B-213924, Apr. 2, 1984, 84-1 CPD ¶ 374. Thus, the propriety of a procurement does not depend upon whether a particular firm has been given the opportunity to submit a proposal, but upon whether the agency obtained adequate competition and reasonable prices. Resource Engineering, B-216986, Nov. 30, 1984, 84-2 CPD ¶ 615.

WPS does not challenge the adequacy of the competition or the reasonableness of the prices obtained. In addition, WPS offers no evidence to support a conclusion that there was a deliberate or conscious intent on the part of the EPA to preclude WPS from competing in the follow-on procurement. EPA publicized this requirement in the CBD on September 6, and the record indicates that five proposals were received. Although it is unfortunate that WPS did not become aware of the solicitation at an earlier date, we find no basis to recommend that EPA cancel and resolicit. Accordingly, this basis for protest is denied.

With respect to WPS' contention that EPA improperly awarded a sole-source contract to Dynatrend, we find this allegation without merit. EPA merely modified Dynatrend's contract to insure continued performance pending the completion of this procurement. An agency decision to modify a contract is a matter of contract administration which is the responsibility of the procuring agency and beyond the scope of our bid protest function. Nucleotronics, Inc., B-213559, July 23, 1984, 84-2 CPD ¶ 82. Although we will review an allegation that a modification went beyond the contract's scope, no such exception is alleged in this instance and, accordingly, we will not consider WPS's protest in this regard.

Finally, in its January 31, 1985, comments on the agency report, WPS raised for the first time the argument that the RFP was incorrectly advertised in the September 6 CBD. WPS alleges that the requirement was for support services, and that, therefore, the announcement should have been placed under category "S" for "Service Contracts" as opposed to category "H" ("Experts and Consulting Contracts") where it appeared.

We find this allegation untimely. Under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(2) (1984), protests must be filed within 10 working days after the basis of the protest is known or should have been known, whichever is earlier. The record indicates that upon receipt of a copy of the protest letter filed with our Office, EPA advised WPS that RFP No. WA84-A445 had been synopsisized on September 6. At that point, WPS became aware of the announcement and any protest of the alleged misplacement of the announcement should have been filed within 10 working days of such notice. Since the protester's allegations on this matter were not filed with our Office until January 31, they are clearly untimely and will not be considered on the merits.

The protest is denied in part and dismissed in part.

*for*   
Harry R. Van Cleve  
General Counsel.